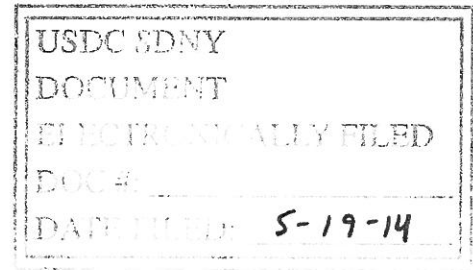


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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United States Securities and Exchange
Commission,

Plaintiff,

-against-

Daniel H. Mudd, Enrico Dallavecchia and
Thomas Lund,

Defendants.

11 Civ. 09202 (PAC)

DISCOVERY ORDER

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HONORABLE PAUL A. CROTTY, United States District Judge:

The parties are in a discovery dispute. Defendants have served a 30(b)(6) Deposition Notice on 14 separate topics which are set forth in Ex. C to Mr. Gonzalez's April 24, 2014 letter.

Deposition topics 1-6 deal with the views of the SEC's Division of Corporate Finance and Office of the Chief Accountant on the proper classification of Alt-A and subprime loans.

Deposition topics 7-14 seek the factual bases for certain allegations in the SEC's Complaint.

Defendants also request leave to file an amended answer to add the affirmative defense of "advice of counsel." This request is made 20 months after Defendants' answer. The proposed defense would be in addition to the current affirmative defense of "institutional process to ensure adequate review—both legal and managerial."

Topics 1-6

These topics are irrelevant and the Court will not compel any deposition on these topics.

The proposed topics deal with the SEC's internal views. For example, Topic 2 seeks the SEC's "own definitions, classifications (etc.) . . . of subprime, Alt-A or less-than-full documentation loans." Topic 3 seeks the SEC's "understanding of FNMA's . . . definitions, classifications of subprime, Alt-A . . . loans."

None of these 6 topics is relevant and, therefore, not a proper topic for a 30(b)(6) deposition.

Topics 7-14

While the SEC claims that these topics inquire into its litigation strategy, that is too broad an argument. On the other hand, 30(b)(6) depositions are not the appropriate discovery tools. The Court directs Defendants to serve Rule 33 contention interrogatories on Topics 7, 9-14. With respect to Topic 8, Defendants may serve a document demand.

Leave to Amend Answers

While the Federal Rules provide that leave to amend "shall be freely given when justice so requires", this does not mean that leave always has to be granted. Here, the proposed amendment comes 20 months after the answer. Defendants offer no explanation for the delay (although there were numerous opportunities to raise this issue earlier). Further, the amendment is offered out of the "excess of caution", without any explanation of why caution is now

necessary. Further, there is no explanation of what the “advice of counsel” would add to the existing affirmative defense of an “institutional process”, including legal review.

The motion for leave to amend is DENIED.

Dated: New York, New York
May 19, 2014

SO ORDERED

A handwritten signature in black ink, appearing to read "Paul A. Crotty", is written over a horizontal line.

PAUL A. CROTTY
United States District Judge